



# Champion Magazine

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<a href="#">Who We Are</a>
<a href="#">Press Room</a>
<a href="#">News &amp; Issues</a>
<a href="#">CLE &amp; Events</a>
<a href="#">Committees</a>
<a href="#">Members Only</a>
<a href="#">Champion Magazine</a>
<a href="#">Indigent Defense</a>
<a href="#">Federal Legislation</a>
<a href="#">White Collar</a>
<a href="#">State Legislation</a>
<a href="#">Affiliate Organizations</a>
<a href="#">Lawyer Resources</a>
<a href="#">Foundation</a>
<b>NACDL.org</b>

[Print or Email This Page](#)

**NACDL News**  
December 2007, Page 8

## ***NACDL News*** *By Jack King*

### **Board Approves *Brady* Report, Judicial Conduct**

The Board of Directors approved two significant items during its fall meeting in Key West, Fla., on Oct. 20. The Board approved a draft of a report to the Justice Department's Office of Professional Responsibility (OPR) suggesting corrections to the haphazard ways that DOJ and various government agencies handle evidence and other material favorable to the defense in criminal cases, also known as Brady/Giglio material. According to NACDL's outside Freedom of Information Act counsel Edwin E. Huddleson, there is no internal DOJ check on department Brady violations that do not involve reckless or willful violations. DOJ needs to create clear guidelines to correct systemic Brady problems when they come to light, Huddleson said. Huddleson prepared a draft letter to OPR that was presented for Board approval and gave a presentation on DOJ's Brady policies — such as they are — by speakerphone at the meeting. The Board approved the draft and it was sent to OPR in November.



After a briefing by Second Vice President Cynthia Hujar Orr, the Board also approved the drafting and submission of a formal complaint requesting investigation of the conduct of Presiding Judge Sharon Keller of the Texas Court of Criminal Appeals, the state's highest criminal court. Attorneys for Texas death row inmate Michael Richard had planned to file for a stay of execution based on the U.S. Supreme Court's certiorari grant in *Baze v. Rees*, an Eighth Amendment challenge to lethal injection, but counsel were experiencing computer problems printing out the required number of copies of the 100-page brief. Counsel, who were in Houston, called the clerk's office in Austin and the court's staff attorney and stated that they expected to file the application around 5:20 p.m. Keller acknowledges personally ordering the clerk's office to close at normal hours, but denies that her order had anything to do with the expected stay of execution. Richard was executed three hours later.

Because allegations in the media that Keller closed the office to block the motion, if proven, would bring the Texas justice system into disrepute, NACDL President Carmen Hernandez filed the formal complaint by mail Oct. 23. The substance of NACDL's complaint, which is believed to be the first judicial conduct complaint in the association's 49-year history, is the subject of this month's President's Column.

NACDL also honored former Ohio public defender Brian Jones, who chose to risk contempt of court rather than take a case to trial 21 1/2 hours after his appointment, with a Presidential Commendation from Carmen Hernandez. Indigent Defense Committee Co-Chair E.G. "Gerry" Morris and President-Elect John Wesley Hall introduced Jones to the Board and welcomed him into the association. A 2007 law school graduate, Jones is now a sole practitioner in Portage County, Ohio.

**UN Passes Death Penalty Moratorium Resolution**

The National Association of Criminal Defense Lawyers is deeply gratified that 99 nations of the UN Third Committee voted for a worldwide moratorium on the use of the death penalty, Carmen Hernandez, the association's 2007-08 president, said on Nov. 15. "We look forward to the endorsement of the General Assembly, and hope that all nations will cease executions before the end of the year. It is appropriate to note that only hours ago, the Supreme Court of the United States stayed the execution of a Florida prisoner who was scheduled to die by lethal injection this very evening."

"I want to thank in particular the European Union, the World Coalition Against the Death Penalty, and our friends in Hands Off Cain for this wonderful victory of civilization over cruelty," she added.

On Oct. 10, Hernandez joined other death penalty opponents at a conference at the United Nations on World Day Against the Death Penalty. NACDL is a steering committee member of the World Coalition Against the Death Penalty.

This year's World Day focus was on generating support for the Nov. 15 moratorium resolution. On Nov. 8, Hernandez faxed a letter to U.S. Ambassador to the United Nations Zalmay Khalilzad requesting that the United States abstain from voting on the resolution. The United States had voted against previous resolutions calling for abolition of the death penalty. NACDL's letter emphasized the diplomatic advantages of not voting against a resolution that a majority of our allies around the world supports, particularly in Europe.

Additional activities in support of the resolution included the lobbying of U.N. Country Missions by International Affairs Committee Vice Chair Speedy Rice and our international affiliate Hands Off Cain. NACDL and Hands Off Cain have partnered continuously on the development and promotion of this resolution since 1997, with annual lobbying campaigns on the draft's text and increasing country co-sponsorships at the U.N. Human Rights Commission (now the Human Rights Council) in Geneva, Switzerland.

NACDL was a founding member of the World Coalition in 2002, and has been a member of the WCADP steering committee since 2003. Rice made high level visits this year with the governments of Thailand and Lebanon in support of the resolution.

In a Nov. 2 meeting with U.N. General Assembly President Srgjan Kerim that was attended by NACDL International Relations representative Speedy Rice, Sister Helen Prejean, author of the bestselling books *Dead Man Walking* and *The Death of Innocents*, Mario Marazziti of the Community of Sant'Egidio, and several other members of the WCADP, Kerim accepted a leather bound book of more than 5 million signatures from people around the world who support the resolution. Since October 1998, Sant'Egidio and other human rights groups around the world have collected 5,245,907 signatures from people in 154 countries.

The hour-long meeting was followed by a news conference widely reported in the European and Asian press.

"The presentation of the 5 million signatures gathered by Sant'Egidio and others could not have been better timed," as the resolution was introduced the same day, Rice observed. "Passage of the resolution will be an important event in support of those seeking to halt the executions in their countries while the debate continues."

Marazziti added that the petition was "a demonstration of the strong will of the world and not just an idea of human rights that is rooted in the Italian or European tradition."

In early October, President Hernandez flew to San Juan, the capital of the U.S. Commonwealth of Puerto Rico, and spoke at a World Coalition anti-death penalty rally. Although the Commonwealth's constitution prohibits the death penalty in Puerto Rican courts, the U.S. government still applies it in the U.S. District Court in federal prosecutions. The Federal District of Puerto Rico has the highest number of federal capital case referrals and the highest number of pending capital cases of all the 94 federal districts.

**Ga. State Univ. Team Tops Cat Bennett Trial Competition**

The four-student team from the Georgia State University College of Law took first place in the 17th Annual Catherine E. "Cat" Bennett National Criminal Student Trial Competition on Oct. 20. The mock trial contest was held in conjunction with NACDL's Fall Meeting in Key West, Fla. Georgia State third-year Zachary North also won the award for Best Advocate.

Co-sponsored by NACDL and the Thomas M. Cooley School of Law in Lansing, Mich., with prize money provided by the Friends of NACDL, the competition provides law students with an opportunity to learn real-life courtroom skills with experienced criminal trial lawyers, law professors, and sitting jurists as judges. The trial problems are also based on real cases.

This year's scenario involved a former prosecutor who was indicted for accepting a bribe, in the form of campaign contributions, to not oppose a new trial for a defendant who had discovered new evidence pointing to his innocence.

Also representing Georgia State were Ernessa Brawley, Mitch Freehauf, and Holly Muehleman.

Founded in 1991, the competition was dedicated the next year to the memory of the much-beloved and never-to-be-forgotten NACDL member and jury selection pioneer Cat Bennett, who died in 1992.

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